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# KERALA GAZETTE

## EXTRAORDINARY

### PUBLISHED BY AUTHORITY

Vol. XXIX] Trivandrum, Friday, 5th October 1984 / 13th Asvina 1906 [No. 853

GOVERNMENT OF KERALA

**Law (Legislation-C) Department**

NOTIFICATION

No. 15255/Leg. C1/84/Law. *Dated, Trivandrum, 5th October, 1984/ 13th Asvina, 1906.*

The following Ordinance promulgated by the Governor on the 29th day of September, 1984, is hereby published for general information.

By order of the Governor,

P. P. MATHAI,
*Special Secretary (Law).*

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1984.

33/4079/MC

# ORDINANCE No. 70 OF 1984

## THE UNIVERSITY LAWS (SECOND AMENDMENT) ORDINANCE, 1984

Promulgated by the Governor of Kerala in the Thirty-Fifth Year of the Republic of India.

*AN*

*ORDINANCE*

*further to amend the Kerala University Act, 1974 and the Calicut University Act, 1975.*

*Preamble.*—WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the University Laws (Second Amendment) Ordinance, 1984.

(2) It shall come into force at once.

2. *Acts 17 of 1974 and 5 of 1975 to be temporarily amended.*—During the period of operation of this Ordinance, the Kerala University Act, 1974 (17 of 1974) and the Calicut University Act, 1975 (5 of 1975), shall have effect subject to the amendments specified in section 3 and section 4 respectively.

3. *Amendment of Act 17 of 1974.*—In the Kerala University Act, 1974 (17 of 1974), in sub-section (1) of section 11, the words "in consultation with the Vice-Chancellor" shall be omitted.

4. *Amendment of Act 5 of 1975.*—In the Calicut University Act, 1975 (5 of 1975), in sub-section (1) of section 11, the words "in consultation with the Vice-Chancellor" shall be omitted.

*P. RAMACHANDRAN,*
*GOVERNOR.*

Government of Kerala
1984

Reg. No. KL/TV(N)/12



# KERALA GAZETTE

## EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXIX] Trivandrum, Friday, 5th October 1984 / 13th Asvina 1906 [No. 854

GOVERNMENT OF KERALA

**Law (Legislation-C) Department**

NOTIFICATION

No. 15254/Leg. C3/84/Law *Dated, Trivandrum, 5th October, 1984/ 13th Asvina, 1906.*

The following Ordinance promulgated by the Governor on the 29th day of September, 1984, is hereby published for general information.

By order of the Governor,
P. P. MATHAI,
*Special Secretary (Law).*

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1984.

33/4080/MC.

## ORDINANCE No. 71 OF 1984

# THE KERALA SICK TEXTILE UNDERTAKINGS (ACQUISITION AND TRANSFER OF UNDERTAKINGS) ORDINANCE, 1984.

Promulgated by the Governor of Kerala in the Thirty-fifth Year of the Republic of India.

*AN*

*ORDINANCE*

*to provide for the acquisition and transfer of the undertakings of the Prabhuram Mills Chengannur, the Kottayam Textiles, Kurumulloor, Kottayam and the Malabar Spinning and Weaving Mills, Kallai, Calicut and the right, title and interest of the owners in respect of those undertakings with a view to reorganising and rehabilitating such undertakings and for matters connected therewith or incidental thereto.*

*Preamble.*—WHEREAS, the Prabhuram Mills, Chengannur, the Kottayam Textiles, Kurumulloor, Kottayam and the Malabar Spinning and Weaving Mills, Kallai, Calicut, are engaged in the production of textiles made wholly or in part of cotton, including cotton yarn, hosiery and rope;

AND WHEREAS the management of the undertakings of the said textile mills were taken over by the Central Government for a limited period under section 18AA of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), and the Kerala State Textile Corporation was appointed under the said section as the authorised person for the management of the undertakings;

AND WHEREAS an amount of approximately two hundred lakhs rupees have been spent on the said undertakings by the State Government to make them viable;

AND WREREAS the said undertakings were declared as relief undertakings under section 3 of the Kerala Relief Undertakings (Special Provisions) Act, 1961 (6 of 1962);

AND WHEREAS it is necessary to acquire the undertakings aforesaid with a view to reorganising and rehabilitating those undertakings as to subserve the interests of the general public by the augmentation of the production and distribution, at fair prices of the aforesaid goods;

AND WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for him to take immediate action;

AND WHEREAS instructions from the President have been obtained in pursuance of the proviso to clause (1) of article 213 of the Constitution of India;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

## CHAPTER I

## PRELIMINARY

1. *Short title and commencement.*—(1) This Ordinance may be called the Kerala Sick Textile undertakings (Acquisition and Transfer of Undertakings) Ordinance, 1984.

(2) It shall come into force at once.

2. *Definitions.*—(1) In this Ordinance, unless the context otherwise requires,—

(a) "appointed day" means the 1st day of September, 1983;

(b) "authorised person" means the person or body of persons appointed under section 18AA of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), to take over the management of the sick textile undertakings;

(c) "bank" means—

(i) the State Bank of India constituted under the State Bank of India Act, 1955 (Central Act 23 of 1955);

(ii) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (Central Act 38 of 1959);

(iii) a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (Central Act 40 of 1980);

(iv) any other bank, being a scheduled bank as defined in clause (e) of section 2 of the Reserve Bank of India Act, 1934 (Central Act 2 of 1934);

(d) "Commissioner" means a Commissioner of Payments appointed under section 16;

(e) "owner", when used in relation to a sick textile undertaking, means the person or firm who or which was, immediately before the take-over of the management of the undertaking under section 18AA of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), the immediate proprietor or lessee or occupier of the sick textile undertaking or any part thereof;

(f) "prescribed" means prescribed by rules made under this Ordinance;

(g) "sick textile undertaking" means a textile undertaking specified in the First Schedule, the management of which has, before the appointed day, been taken over by the Central Government under the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951);

(h) "specified date" means such date as the Government may, for the purpose of any provision of this Ordinance, by notification in the Gazette, specify; and different dates may be specified for different provisions of this Ordinance;

(i) "State Textile Corporation" means the Kerala State Textile Corporation Limited formed and registered under the Companies Act, 1956 (Central Act 1 of 1956);

(j) "textile company" means a company specified in column (3) of the First Schedule as owning the undertaking specified in the corresponding entry in column (2) of that Schedule;

(k) "subsidiary textile corporation" means a company formed by the State Textile Corporation as its subsidiary;

(2) Words and expressions used but not defined in this Ordinance and defined in the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), shall have the meanings respectively assigned to them in that Act.

(3) Words and expressions used but not defined either in this Ordinance or in the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), but defined in the Companies Act, 1956 (Central Act 1 of 1956), shall have the meanings respectively assigned to them in the Companies Act, 1956 (Central Act 1 of 1956).

CHAPTER II

## ACQUISITION OF THE RIGHTS OF OWNERS OF SICK TEXTILE UNDERTAKINGS

3. *Acquisition of rights of owners in respect of sick textile undertakings.*—(1) On the appointed day, every sick textile undertaking and the right, title and interest of the owner in relation to every such sick textile undertakings shall, by virtue of this Ordinance, stand transferred to, and shall vest absolutely in, the State Government.

(2) Every sick textile undertaking which stands vested in the State Government by virtue of sub-section (1) shall, immediately after it has so vested, stand transferred to, and vest in, the State Textile Corporation.

4. *General effect of vesting.*—(1) Every sick textile undertaking referred to in section 3 shall be deemed to include all assets, rights, lease-holds, powers, authorities and privileges and all property, movable and immovable, including lands, buildings, workshops, stores, instruments, machinery and equipment, cash balances, cash on hand, reserve funds, investments and book debts and all other rights and interests in, or arising out of, such property as were immediately before the appointed day in the possession, power or control of the authorised person and all books of account, registers and all other documents of whatever nature relating thereto and shall also be deemed to include the liabilities and obligations specified in sub-section (2) of section 5.

(2) All property as aforesaid which have vested in the State Government under sub-section (1) of section 3 shall, by force of such vesting, be freed and discharged from any trust, obligation, mortgage, charge, lien and all other encumbrances affecting it, and any attachment, injunction or decree or order of any court restricting the use of such property in any manner shall be deemed to have been withdrawn.

(3) Where any licence or other instrument in relation to a sick textile undertaking had been granted at any time before the appointed day to an owner by the Central Government or a State Government or any other authority, the State Textile Corporation shall, on and from the appointed day, be deemed to be substituted in such licence or other instrument in place of the owner referred to therein as if such licence or other instrument had been granted to it and shall hold such licence or the sick textile undertaking specified in such other instrument for the remainder of the period for which the owner would have held such licence or the sick textile undertaking under such other instrument.

(4) Every mortgagee of any property which has vested under this Ordinance in the State Government and every person holding any charge, lien or other interest in or in relation to any such property shall give, within such time and in such manner as may be prescribed, an intimation to the Commissioner, of such mortgage, charge, lien or other interest.

(5) For the removal of doubts, it is hereby declared that the mortgagee of any property referred to in sub-section (2) or any other person holding any charge, lien or other interest in, or in relation to, any such property shall be entitled to claim, in accordance with his rights and interest, payment of the mortgage money or other dues, in whole or in part, out of the amount specified in relation to such property, in the First Schedule, but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the State Government.

(6) If, on the appointed day, any suit, appeal or other proceeding of whatever nature in relation to any matter specified in sub-section (2) of section 5 in respect of the sick textile undertaking, instituted or preferred by or against the textile company or the authorised person, is pending, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the sick textile undertaking or of anything contained in this Ordinance but the suit, appeal or other proceedings may be continued, prosecuted and enforced by the State Textile Corporation.

5. *Owner to be liable for certain prior liabilities*.—(1) Every liability, other than the liability specified in sub section (2), of the owner of a sick textile undertaking, in respect of any period prior to the appointed day shall be the liability of such owner and shall be enforceable against him and not against the State Government or the State Textile Corporation.

(2) Any liability arising in respect of—

(a) loans advanced by the Central Government or the State Government to a sick textile undertaking (together with interest due thereon) after the management of such undertaking had been taken over by the Central Government under section 18AA or the Industries (Development and Regulation) Act, 1951, (Central Act 65 of 1951);

(b) amounts advanced to a sick textile undertaking (after the management of such undertaking had been taken over by the Central Government under the said section 18AA), by the State Textile Corporation together with interest due thereon;

(c) wages, salaries and other dues of employees of the sick textile undertaking, in respect of any period after the management of such undertaking had been taken over by the Central Government under the said section 18AA, shall, on and from the appointed day, be the liability of the State Government and shall be discharged, for and on behalf of that Government, by the State Textile Corporation as and when repayment of such loans or amounts become due or as and when such wages, salaries or other dues become due and payable.

(3) For the removal of doubts, it is hereby declared that—

(a) save as otherwise expressly provided in this section or in any other section of this Ordinance, no liability, other than the liability specified in sub-section (2), in relation to a sick textile undertaking in respect of any period prior to the appointed day, shall be enforceable against the State Government or the State Textile Corporation,

(b) no award, decree or order of any court, tribunal or other authority in relation to any sick textile undertaking passed after the appointed day in respect of any matter, claim or dispute, in relation to any matter not referred to in sub-section (2) which arose before that day, shall be enforceable against the State Government or the State Textile Corporation;

(c) no liability of any sick textile undertaking or any owner thereof for the contravention, before the management of such undertaking had been taken over by the Central Government under section 18AA of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), of any provision of a law for the time being in force, shall be enforceable against the State Government or the State Textile Corporation.

6. *State textile corporation to form subsidiary corporations.*—(1) The State Textile Corporation may, if it considers it necessary to do so, form subsidiary corporations under the Companies Act, 1956 (Central Act 1 of 1956), and register them under that Act.

(2) The State Textile Corporation may, by order in writing, transfer any sick textile undertaking or part thereof to a subsidiary textile corporation and any such transfer shall be subject to such terms and conditions as may be specified in the said order.

(3) The subsidiary Textile Corporation shall, on and from the date of such transfer, be deemed to be substituted in the licence or other instrument referred to in sub-section (3) of section 4 in place of the State Textile Corporation as if such licence or other instrument had been granted to the Subsidiary Textile Corporation, and shall hold such licence or other instrument for the remainder of the period for which the State Textile Corporation would have held such licence or other instrument.

(4) On the transfer to a Subsidiary Textile Corporation of any sick textile undertaking or any part thereof, the liabilities required to be discharged by the State Textile Corporation under sub-section (2) of section 5 shall, in so far as they relate to the sick textile undertaking or part thereof so transferred to the Subsidiary Textile Corporation, be discharged, on and from the date of such transfer, by the Subsidiary Textile Corporation as and when any such liability is required to be discharged.

(5) Save as otherwise expressly provided in this Ordinance, references in this Ordinance to the State Textile Corporation shall, in respect of any sick textile undertaking or any part thereof which is transferred to a Subsidiary Textile Corporation, be construed as references to the Subsidiary Textile Corporation.

7. *Shares to be issued by the State Textile Corporation for the value of the assets transferred to it by State Government.*—(1) An amount equal to the value of the assets of a sick textile undertaking transferred to, and vested in, the State Textile Corporation under sub-section (2) of section 3, shall be deemed to be the contribution made by the State Government to the equity capital of the State Textile Corporation; and for the contribution so made, the State Textile Corporation shall issue (if necessary after amending its memorandum and articles of association) to the State Government paid-up shares, in its equity capital, having a face value equal to the amount specified against the sick textile undertaking in the corresponding entry in column (4) of the First Schedule.

(2) Where any liability is assumed by the State Government under sub-section (1) of section 25, they may call upon the State Textile Corporation to issue (if necessary, after amending the memorandum and articles of association of the Corporation) to the State Government additional paid-up shares, in its equity capital, having a face value equal to the amount of the liability assumed by the State Government under the said sub-section.

## CHAPTER III

## PAYMENT OF AMOUNT

8. *Payment of amount to owners of sick textile undertakings.*—(1) The owner of every sick textile undertaking shall be given by the State Government, in cash and in the manner specified in Chapter VI, for the transfer to, and vesting in, it under sub-section (1) of section 3, of such sick textile undertaking and the right, title and interest of the owner in relation to such sick textile undertaking, an amount equal to the amount specified against it in the corresponding entry in column (4) of the First Schedule.

(2) In addition to the amount referred to in sub-section (1) there shall be given by the State Government, in cash, to the owner of every sick textile undertaking, simple interest at the rate of four percent per annum on the amount specified against such owner in the corresponding entry in column (4) of the First Schedule for the period commencing on the appointed day, and ending on the date on which payment of such amount is made by the State Government to the Commissioner.

9. *Payment of further amount.*—(1) Every Textile company shall be given by the State Government for the deprivation of management of its undertaking an amount of one thousand rupees per annum for the period commencing on the date on which the management of the undertaking of that company was taken over in pursuance of the order made by the Central Government under the provisions of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), and ending on the appointed day.

(2) The amount calculated in accordance with the provisions of sub-section (1) shall carry simple interest at the rate of four percent per annum for the period commencing on the appointed day and ending on the date on which the payment of such amount is made by the State Government to the Commissioner.

(3) The amounts determined in relation to any textile company in accordance with the provisions of sub-sections (1) and (2) shall be given by the State Government to the textile company in addition to the amount specified in the First Schedule against that company.

## CHAPTER IV

## MANAGEMENT, ETC., OF SICK TEXTILE UNDERTAKINGS

10. *Management, etc., of sick textile undertakings.*—The State Textile Corporation or any person which that Corporation may, by order in writing, specify, shall be entitled to exercise the powers of general superintendence, direction, control and management of the affairs and business of a sick textile undertaking, the right, title and interest of an owner in relation to which have vested in that Corporation under sub-section (2) of section 3, and do all such things as the owner of the sick textile undertaking is authorised to exercise and do.

11. *Duty of persons in charge of management of sick textile undertakings to deliver all assets, etc.*—On the vesting of the management of a sick textile undertaking in the State Textile Corporation, all persons in charge of the management of such sick textile

undertaking immediately before such vesting shall be bound to deliver to the State Textile Corporation all assets, books of account, registers or other documents in their custody relating to the sick textile undertaking.

12. *Accounts.*—The State Textile Corporation shall maintain the accounts of sick textile undertakings in accordance with the provisions of the Companies Act, 1956 (Central Act 1 of 1956).

CHAPTER V

## PROVISIONS RELATING TO EMPLOYEES OF SICK TEXTILE UNDERTAKING

13. *Employment of certain employees to continue.*—(1) Every person who is a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), and has been immediately before the appointed day, employed in a sick textile undertaking shall become, on and from the appointed day, an employee of the State Textile Corporation with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the rights in relation to such sick textile undertaking had not been transferred to, and vested in, the State Textile Corporation and shall continue to do so unless and until his employment in the State Textile Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the State Textile Corporation.

(2) Every person who is not a workman within the meaning of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), and who has been, immediately before the appointed day, employed in a sick textile undertaking shall, in so far as such person is employed in connection with the sick textile undertaking which has vested in the State Textile Corporation, become, on and from the appointed day, an employee of the State Textile Corporation and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity and other matters as he would have held the same under the sick textile undertaking if it had not vested in the State Textile Corporation and shall continue to do so unless and until his employment in the State Textile Corporation is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the State Textile Corporation.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947), or in any other law for the time being in force, the transfer of the services of any officer or other person employed in a sick textile undertaking to the State Textile Corporation shall not entitle such officer or other employee to any compensation under this Ordinance or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(4) Where, under the terms of any contract of service or otherwise, any person whose services become terminated or whose services become transferred to the State Textile Corporation by reason of the provisions of this Ordinance is entitled to any arrears of salary or wages or any payment for any leave not availed of or other payment, not being payment by way of gratuity or pension, for any period prior to the take over of the management of a sick textile undertaking under section 18AA of the Industries (Development and Regulation) Act, 1951 (Central Act 65 of 1951), such person may, except to the extent such liability has been taken over by the State Government under section 5, enforce his claim against the owner of the sick textile undertaking but not against the State Government or the State Textile Corporation.

14. *Provident and other funds.*—(1) Where the owner of a sick textile undertaking has established a provident fund, superannuation, welfare or other fund for the benefit of the persons employed in such sick textile undertaking, the moneys relatable to the employees, whose services have become transferred by or under this Ordinance to the State Textile Corporation shall, out of the moneys standing, on the appointed day, to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and shall vest in, the State Textile Corporation.

(2) The moneys which stand transferred under sub-section (1) to the State Textile Corporation shall be dealt with by that Corporation in such manner as may be prescribed.

15. *Transfer of employees to Subsidiary Textile Corporation.*—Where any sick textile undertaking or any part thereof is transferred under this Ordinance to a Subsidiary Textile Corporation, every person referred to in sub-section (1) and sub-section (2) of section 13, shall, on and from the date of such transfer, become an employee of the Subsidiary Textile Corporation, and the provisions of section 13 and 14 shall apply to such employee as they apply to an employee of the State Textile Corporation as if references in the said sections to the State Textile Corporation were references to the Subsidiary Textile Corporation.

## CHAPTER VI

## COMMISSIONERS OF PAYMENTS

16. *Appointment of Commissioners of payments.*—(1) For the purpose of disbursing the amounts payable to the owner of each sick textile undertaking, the State Government shall, by notification in the Gazette,—

(a) appoint such persons as they may think fit to be Commissioners of Payments; and

(b) specify the sick textile undertaking or sick textile undertakings in respect of which each Commissioner of Payments shall exercise the powers conferred, and perform the duties imposed, on him by or under this Ordinance.

(2) The State Government may appoint such other persons as they may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the powers exercisable by him under this Ordinance and different persons may be authorised to exercise different powers.

(3) Any person authorised by the Commissioner to exercise any powers may exercise those powers in the same manner and with the same effect as if they have been conferred on that person directly by this Ordinance and not by way of authorisation.

(4) The salaries and allowances of the Commissioners shall be defrayed out of the Consolidated Fund of the State of Kerala.

17. *Payment by State Government to the Commissioner.*—(1) The State Government shall, within thirty days from the specified date, pay in cash to the Commissioner, for payment to the owner of a sick textile undertaking, an amount equal to the amount specified against the sick textile undertaking in the First Schedule and shall also pay to the Commissioner such sums as may be due to the owner of a sick textile undertaking under sub-section (2) of section 8 and section 9.

(2) A separate account shall be opened by the State Government in favour of the Commissioner and every amount paid under this Ordinance to the Commissioner shall be deposited by him in that account and thereafter such account shall be operated by the Commissioner.

(3) Separate records shall be maintained by the Commissioner in respect of each sick textile undertaking in relation to which payments have been made to him under this Ordinance.

(4) Interest accruing on the amounts standing to the credit of the account referred to in sub-section (2) shall enure to the benefit of the owners of the sick textile undertakings.

18. *Claims to be made to the Commissioner.*—Every person having a claim against the owner of a sick textile undertaking shall prefer such claim before the Commissioner within thirty days from the specified date:

Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days may entertain the claim within a further period of thirty days but not thereafter.

19. *Priority of claims.*—The claims arising out of the matters specified in the Second Schedule shall have priorities in accordance with the following principles, namely:—

(a) Category I will have precedence over all other categories and Category II will have a precedence over Category III and so on;

(b) The claims specified in each of the categories, except category V, shall rank equally and be paid in full, but if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly;

(c) The liabilities specified in Category V shall be discharged subject to the priorities specified in this section, in accordance with the terms of the secured loans and the priority, *interse,* of such loans; and

(d) The question of payment of a liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

20. *Examination of claims.*—(1) On receipt of the claims under section 18, the Commissioner shall arrange the claims in the order of priority specified in the Second Schedule and examine the same in accordance with the said order.

(2) If, on examination of the claims, the Commissioner is of the opinion that the amount paid to him under this Ordinance is not sufficient to meet the liabilities specified in any lower category, he shall not be required to examine the liabilities in respect of such lower category.

21. *Admission or rejection of claims.*—(1) After examining the claim with reference to the priority set out in the Second

Schedule, the Commissioner shall fix a certain date on or before which every claimant shall file the proof of his claim or be excluded from the benefit of the disbursement made by the Commissioner.

(2) Not less than fourteen days' notice of the date so fixed shall be given by advertisement in one issue of a daily newspaper in the English Language and one issue of a daily newspaper in the regional language, as the Commissioner may consider suitable, and every such notice shall call upon the claimant to file the proof of his claim with the Commissioner within the time specified in the advertisement.

(3) Every claimant who fails to file the proof of his claim within the time specified by the Commissioner shall be excluded from the disbursements made by the Commissioner.

(4) The Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the owner of the sick textile undertaking an opportunity of refuting the claim and after giving the claimants a reasonable opportunity of being heard, in writing, admit or reject the claim in whole or in part.

(5) The Commissioner shall have the power to regulate his own procedure in all matters arising out of the discharge of his functions, including the place or places at which he will hold his sittings and shall, for the purpose of making any investigation under this Ordinance, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) reception of evidence on affidavits;

(d) issue of commissions for the examination of witnesses.

(6) Any investigation before the Commissioner shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Central Act 45 of 1860), and the Commissioner shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(7) A claimant who is dissatisfied with the decision of the Commissioner may prefer an appeal against the decision to the principal civil court of original jurisdiction within the local limits of whose jurisdiction the sick textile undertaking is situated.

22. *Disbursement of money by the Commissioner to claimants.*—After admitting a claim under this Ordinance, the amount due in respect of such claim shall be credited by the Commissioner to the relevant fund or be paid to the person or persons to whom such sums are due and on such credit or payment the liability of the owner in respect of such claim shall stand discharged.

23. *Disbursement of amounts to the owners of sick textile undertaking.*—(1) If out of the moneys paid to him in relation to a sick textile undertaking, there is a balance left after meeting the liabilities as specified in the Second Schedule, the Commissioner shall disburse such balance to the owner of such sick textile undertaking.

(2) Before making any payment to the owner of any sick textile undertaking under sub-section (1), the Commissioner shall satisfy himself as to the right of such person to receive the whole or any part of such amount, and in the event of there being a doubt or dispute as to the right of the person to receive the whole or any part of the amount referred to in section 8, the Commissioner shall refer the matter to the Court and make the disbursement in accordance with the decision of the Court.

(3) For the removal of doubts, it is hereby declared that the entries in column (3) of the First Schedule shall not be deemed to be conclusive as to the right, title and interest of any person in relation to any sick textile undertaking specified in the corresponding entries in column (2) of the said Schedule, and evidence shall be admissible to establish the right, title and interest of any person in relation to such sick textile undertaking.

(4) Where any machinery, equipment or other property in a sick textile undertaking has vested in the State Textile Corporation but such machinery, equipment or other property does not belong to the owner of such sick textile undertaking, the amount specified in column (4) of the First Schedule against such sick textile undertaking shall, on a reference made to it by the Commissioner, be apportioned by the court between the owner of such sick textile undertaking and the owner of such machinery, equipment or other property having due regard to the value of such machinery, equipment or other property on the appointed day.

*Explanation.*—In this section, "court", in relation to a sick textile undertaking, means the principal civil court of original jurisdiction within the local limits of whose jurisdiction the sick textile undertaking is situated.

24. *Undisbursed or unclaimed amounts to be deposited to the general revenue account.*—Any money paid to the Commissioner which remains undisbursed or unclaimed for a period of three years from the last day on which the disbursement was made, shall be transferred by the Commissioner to the general revenue account of the State Government, but a claim to any money so transferred may
the State Government, but a claim to any money so transferred may
payment and shall be dealt with as if such transfer had not been remains undischarged, and that liability shall be assumed by the an order for the refund of revenue.

## CHAPTER VII

## MISCELLANEOUS

25. *Assumption of liability.*—(1) Where any liability of a sick textile undertaking arising out of any claim specified in Category I, Category II or Category III or Category IV in the Second Schedule is not discharged fully by the Commissioner out of the amount paid to him under this Ordinance, the Commissioner shall intimate in writing to the State Government the extent of the liability which remains undischarged, and that liability shall be assumed by the State Government.

(2) The liability assumed by the State Government under sub-section (1) shall be discharged by payment of the amount of the liability in negotiable bonds redeemable after the expiry of ten years and carrying simple interest at the rate of seven and a half per cent per annum with effect from the appointed day.

26. *Ordinance to over-ride all other enactments.*—The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or in any instrument having effect by virtue of any law other than this Ordinance, or in any decree or order of any court, tribunal or authority.

27. *Contracts to cease to have effect unless ratified by State Textile Corporation.*—(1) Every contract entered into by the owner or occupier of any sick textile undertaking for any service, sale or supply and in force immediately before the appointed day shall, on and from the expiry of one hundred and eighty days from the date of commencement of this Ordinance, cease to have effect unless such contract is, before the expiry of that period, ratified, in writing, by the State Textile Corporation, and in ratifying such contract the State Textile Corporation may, with the previous approval of the State Government, make such alterations or modifications therein as it may think fit:

Provided that State Textile Corporation shall not omit to ratify a contract, and shall not make any alteration or modification in a contract, unless it is satisfied that such contract is unduly onerous or has been entered into in bad faith or is detrimental to the interests of the sick textile undertaking.

(2) The State Textile Corporation shall not omit to ratify a contract, and shall not make any alteration or modifiction therein, except after giving to the parties to the contract a reasonable opportunity of being heard and except after recording in writing its reasons for refusal to ratify the contract or for making any alteration or modification therein.

28. *Penalties.*—Any person who,—

(a) having in his possession, custody or control any property forming part of a sick textile undertaking, wrongfully withholds such property from the State Government or the State Textile Corporation, or any person authorised by that Government or Corporation, as the case may be, in this behalf; or

(b) wrongfully obtains possession of, or retains, any property forming part of the sick textile undertaking or wilfully withholds or fails to furnish to the State Government, the State Textile Corporation or any person specified by that Government or Corporation, as the case may be, any document relating to such sick textile undertaking which may be in his possession, custody or control or fails to deliver to the State Textile Corporation or any person specified by that Corporation any assets, books of account, registers or other documents in his custody relating to the sick textile undertaking; or

(c) wrongfully removes or destroys any property forming part of any sick textile undertaking or prefers any claim under this Ordinance which he knows or has reasonable cause to believe to be false or grossly inaccurate, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ten thousand rupees, or with both.

29. *Offences by companies.*—(1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he bad exercised all duc diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

30. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of that Government or the authorised person or the State Textile Corporation or any Subsidiary Textile Corporation or any officer or other person authorised by either of such Corporations for anything which is in good faith done or intended to be done under this Ordinance.

31. *Delegation of powers.*—(1) The State Government may, be notification in the Gazette, direct that all or any of the powers exercisable by them under this Ordinance other than the power under section 34 may also be exercised by any person or persons as may be specified in the notification.

(2) Whenever any delegation of power is made under sub-section (1), the person to whom such power has been delegated shall act under the direction, control and supervision of the State Government.

32. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Ordinance, the State Government may, by order not inconsistent with the provisions of this Ordinance, remove such difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Ordinance.

33. *Declaration as to the policy of the State.*—It is hereby declared that this Ordinance is for giving effect to the policy of the State towards securing the principles specified in clause (b) of article 39 of the Constitution.

*Explanation.*—In this section, "State" has the same meaning as in article 12 of the Constitution.

34. *Power to make rules.*—(1) The Government may, be notification in the Gazette, make rules to carry out the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the time within which and the manner in which an intimation referred to in sub-section (4) of section 4 shall be given;

(b) the manner in which moneys in any provident or other fund referred to in section 14 shall be dealt with;

(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session, for a total period of forteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**The First Schedule**

[*See* sections 2(g), 2(j), 4(5) and 8]

| *Sl. No.* | *Name of the sick textile undertaking* | *Name of the owner* | *Amount (in rupees)* |
|---|---|---|---|
| (1) | (2) | (3) | (4) |
| 1. | Malabar Spinning and Weaving Mills, P.O. Kallai, Calicut. | Malabar Spinning and Weaving Company Ltd., P.O. Kallai, Calicut 673003, Kerala. | 30,60,524 |
| 2. | Prabhuram Mills, P.O. Kottah, Chengannur. | Prabhuram Mills Ltd., P.O. Kottah, (Via) Chengannur, Kerala. | 17,06,228 |
| 3. | Kottayam Textiles, Kurumullur P.O., (Via) Ettumanur, Kottayam District. | Kottayam Textiles Ltd., Vedagri, Kurumullur P.O., (Via) Ettumanur, Kottayam District, Kerala. | 41,10,533 |

## The Second Schedule

(*See* sections 19, 20, 21 and 25)

ORDER OF PRIORITIES FOR THE DISCHARGE OF LIABILITIES IN RESPECT OF A SICK TEXTILE UNDERTAKING

### PART I

*Category—I*

Arrears in relation to provident fund, salaries and wages, and other amounts, due to an employee for the pre-take over management period.

### PART II—OTHER LIABILITIES

(A) POST-TAKEOVER MANAGEMENT PERIOD

*Category—II*

(a) Loans advanced by a Bank.

(b) Loans advanced by an Institution other than a Bank.

(c) Any other loan.

(d) Any credit availed of for purposes of trade or manufacturing operations.

*Category—III*

(a) Revenue, taxes, cesses, rates or any other dues to the Central Government or a State Government.

(b) Any other dues.

(B) PRE-TAKEOVER MANAGEMENT PERIOD

*Category—IV*

Principal amounts of the secured loans advanced by any nationalised Bank or public financial institution.

*Category—V*

Secured loans other than those specified under category IV.

*Category—VI*

Revenue, taxes, cesses, rates or any other dues to the Central Government, a State Government, a local authority or a State Electricity Board.

*Category—VII*

(a) Any credit availed of for purpose of trade or manufacturing operations.

**(b)** Any other dues.

*Category—VIII*

Interest amounts on the secured loans advanced by any nationalised bank or public financial institution.

*P. RAMACHANDRAN*
*GOVERNOR.*

Government of Kerala
1984

Reg. No. KL/TV(N)/12



# KERALA GAZETTE

## EXTRAORDINARY

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GOVERNMENT OF KERALA

**Transport (B) Department**

NOTIFICATION

G. O. (P) No. 64/84/Tr. D. *Dated, Trivandrum, 29th September,* 1984.

**S. R. O. No. 1163/84.**—In exercise of the powers conferred by clause (za) of subsection (2) of Section 68 of the Motor Vehicles Act, 1939 (Central Act IV of 1939), the Government of Kerala hereby make the following Rules further to amend the Kerala Motor Vehicles Rules, 1961, the same having been previously published under notification No. 10521/TB3/84/ F&P dated the 7th June, 1984, in the Kerala Gazette No. 26 dated the 26th June, 1984, as required by subsection (1) of Section 133 of the said Act, namely :—

RULES

1. *Short title* :—These Rules may be called the Kerala Motor Vehicles (Amendment) Rules, 1984.

2. *Amendment of rule 214* :—In the Kerala Motor Vehicles Rules, 1961, in rule 214, for the words, "Every operator of stage Carriages", the words, "It shall be a condition of every stage carriage permit that an operator" shall be substitued.

By order of the Governor,

V. A. AUGUSTINE,

*Additional Secretary to Government.*

33/4078/B

## Explanatory Note

(This is not part of the notification, but is intended to indicate its general purport).

Maintaining reserve bus for stage carriage service is one of the conditions included in the list of special conditions attached to stage carriage service. Although this has been attached to stage carriage permit, it is not prescribed as a condition in the Kerala Motor Vehicles Rules. This notification is intended to achieve the above purpose.

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